

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Adak Eagle Enterprises, LLC and)	WC Docket No. 10-90
Windy City Cellular, LLC)	
)	
Petitions for Waiver of Certain High-Cost)	WT Docket No. 10-208
Universal Service Rules)	

**REPLY OF
NTCA—THE RURAL BROADBAND ASSOCIATION AND
THE WESTERN TELECOMMUNICATIONS ALLIANCE
TO OPPOSITION OF GENERAL COMMUNICATION, INC.**

NTCA—The Rural Broadband Association (“NTCA”)¹ and the Western Telecommunications Alliance (“WTA”)² hereby reply to the Opposition filed on August 30, 2013 by General Communication, Inc. (“GCI”) to the Application for Review filed by Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“Windy City”) in the above-captioned proceedings. NTCA and WTA reply specifically with respect to those aspects of GCI’s Opposition that highlight: (1) concerns about the availability of fixed voice and broadband services from a carrier of last resort such as AEE; and (2) the notion that concerns regarding possible default on United States Department of Agriculture (“USDA”) loans are outweighed through a simple mathematical comparison of the amount of universal service fund (“USF”) support to be received by the company in question.

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers; Adak Eagle Enterprises, LLC is a member of NTCA. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

² WTA is a trade association that represents more than 250 small rural telecommunications companies that provide voice, broadband and video services in the 24 states west of the Mississippi River.

As an initial matter, GCI's Opposition highlights what is potentially the most troubling aspect of the order that is the subject of the instant Application for Review.³ Specifically, in arguing that no waiver was warranted for AEE, GCI contends – once again without any evidence beyond its counsel's promise – that it “stands ready to ensure that voice and broadband services continue on Adak Island in the event that AEE and/or Windy City cease providing service.”⁴ As concerning as it is that the Wireline Competition and Wireless Telecommunications Bureaus (the “Bureaus”) would take it largely on faith (without the kind of probing, “data-driven” evaluation that the Commission seeks to employ in other contexts) that a would-be competitor can step into the shoes of the incumbent local exchange carrier without disrupting or otherwise harming service to consumers, of even greater concern is the clarification buried by GCI in a footnote to the Opposition: “Although GCI stated it could replace necessary links to cell sites, school, health clinic, and other enterprise users with microwave facilities, and although GCI committed to continuing to provide voice service, it did not commit to providing ‘wireline’ service.”⁵

It is important to take full stock of what this statement means – particularly for the consumers on Adak Island. In short, the reliance on GCI's wireless services in the Bureaus' Order creates on Adak Island the very situation that the Commission has attempted to approach with much greater evidentiary rigor and analytical discipline on Fire Island – a situation in which some consumers may lose access to wireline service and be left only to receive wireless

³ *Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, Petitions for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90 and WT Docket No. 10-208, Order, DA 13-1578 (rel. July 15, 2013) (“Bureaus’ Order”).

⁴ Opposition at 3 (citing Letter from John T. Nakahata, Counsel to GCI, to Marlene H. Dortch, Secretary, Federal Communications Commission (the “Commission”) (filed May 30, 2013)).

⁵ Opposition at n.8 (emphasis added).

services.⁶ Without getting into the facts of GCI's wireless coverage or Windy City's ability to sustain its wireless service offerings in the absence of a waiver, there is absolutely no evidence, nor even any examination, of whether GCI's wireless services can substitute for AEE's wireline services. Instead, as GCI's own footnote highlights, the order breezes past and fails to address altogether the very significant questions of whether GCI's wireless services: (1) offer a meaningful alternative to the fixed services – both voice *and* broadband – offered by AEE as an incumbent local exchange carrier; and (2) can even reach all customers on the island to provide such wireless services even in the unlikely event that they could in fact be construed as some sort of alternative to fixed services.⁷

⁶ To be clear, this is neither to pass judgment upon nor to take any specific position with respect to the Fire Island situation currently under review, particularly in light of the very different circumstances that gave rise to the situation there. The point made here is merely that, in the Fire Island scenario, the question of whether wireless services can provide an effective substitute in all respects for the availability of wireline services is subject to a painstaking amount of scrutiny, detailed analysis, and debate, whereas on Adak Island, this question astonishingly appears not even to have been asked, never mind examined, in the Bureaus' Order. The residents and businesses in rural areas deserve no less protection or process than other Americans.

⁷ See *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14555 (2012) (“*Fifth Reconsideration Order*”), at ¶ 21 (“Specifically, we envision granting relief to incumbent telephone companies only in those circumstances in which the petitioner can demonstrate that consumers served by such carriers face a significant risk of losing access to a broadband-capable network that provides both voice as well as broadband today, at reasonably comparable rates, in areas where there are no alternative providers of voice or broadband.”) (emphasis added); see also Opposition at 1-2 (stating that GCI offers “terrestrial wireless voice service” to all but approximately 10 households on Adak, but failing to identify the locations to which it offers broadband, what speeds it offers, or the rates (and any data limits) that apply to such services as compared to Adak’s wireline offerings).

This glaring vacuum of analysis with respect to the impact on consumers of any loss of access to fixed services flies in the face of the waiver standard set forth in the *USF/ICC Order* and the *Fifth Reconsideration Order*.⁸ The Commission should therefore utilize the Application for Review filed by AEE to reaffirm and reassert that it will employ in all cases the standard and undertake the carefully constructed analysis contemplated by these prior rulings.

The Bureaus' Order gives rise to further concern by treating the question of default on USDA loans as a mere "scorekeeping" exercise in the process of considering waivers. By way of background, in the *USF/ICC Order*, the Commission recognized that in many cases, network build-outs in high-cost areas can only be achieved by small companies through the leverage of long-term debt capital. As a result, the Commission stated: "We will also consider whether the specific reforms would cause a provider to default on existing loans and/or become insolvent."⁹ Presuming this statement required something more than just a mere passing observation of the risk of default, then the Bureaus' Order failed to carry out the Commission's intent.

Specifically, even as it acknowledges that the lack of a waiver could lead to default by AEE on an existing USDA Rural Utilities Service ("RUS") loan, the order dismisses this concern by noting that the amount of USF to be received by AEE is larger as a quantitative matter than the loan amounts subject to default: "[E]ven if AEE were to default on its RUS loan, this cost

⁸ See *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17840 (2011) ("*USF/ICC Order*"), at ¶ 540; *Fifth Reconsideration Order*, 27 FCC Rcd at 14555, ¶ 21.

⁹ *USF/ICC Order*, 26 FCC Rcd at 17840, ¶ 540.

would be more than offset by savings to the USF.”¹⁰ While GCI defends the order by citing to this very statement as proof that the Bureaus did not “ignore” the risk of default, it is hard to square the simple mathematical reasoning in this statement with the Commission’s direction in the *USF/ICC Order* to consider the risk of default.

Indeed, the consequences of this approach, if sustained, are potentially significant and have implications on budgetary matters far beyond the telecommunications industry. For example, does this approach now create a bright-line test whereby a waiver is available only to those who can, among other things, show their debt obligations are greater than their USF receipts? And to whom is the “cost” relevant in the footnote from the Bureaus’ Order – assuming the “cost” and the “offset” are taken from the perspective of the federal government generally, does this mean that default on private loans can never be a factor in considering a waiver? Furthermore, in the particular context of USDA loans, such loans are the subject of appropriations and budget authority from Congress, whereas USF as a user-fee program under the Communications Act of 1934 is not part of the federal budget.¹¹ Thus, even if it may *look* from a certain perspective as if there is some “offset” to be realized between USF and USDA

¹⁰ *Bureaus’ Order* at n. 72.

¹¹ See Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2014*, Budget Concepts and Budget Process, at 131 (available at: <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/spec.pdf>). (“If the Government modifies the terms of an outstanding direct loan or loan guarantee in a way that increases the cost as the result of a law or the exercise of administrative discretion under existing law, the program account records obligations for the increased cost and outlays the amount to the financing account. As with the original subsidy cost, agencies may incur modification costs only if the Congress has appropriated funds to cover them.”) In fact, the irony with taking an “offset” perspective to default is that USDA’s RUS loan programs have – at least to date – been among a select group of government programs that could be considered “*moneymakers*” for the American taxpayer, providing a positive return to the U.S. Treasury. See *id.* (“For a few programs, the estimated subsidy cost [to the Federal Government budget] is negative because the present value of expected Government collections exceeds the present value of expected payments to the public over the term of the loan.”)

loans in the case of a waiver like that sought by AEE, the potential need for Congress to extend budget authority and/or make additional appropriations in the event of defaults on USDA loans due to denial of a waiver by this Commission should not and must not be ignored through the use of a simplistic quantitative comparison.

For the foregoing reasons, the Commission should utilize the instant Application for Review to correct these significant flaws in the application of the standards for waiver as adopted by the Commission in prior orders, and to ensure that these standards are applied properly in the context of any future requests for waiver.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Barbara E. Fitzpatrick, certify that a copy of the NTCA–The National Rural Broadband Association and the Western Telecommunications Alliance foregoing Reply to Opposition of General Communication, Inc. in WC Docket No. 10-90, WT Docket No. 10-208, was served on this 9th day of September 2013 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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